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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,583	08/29/2003	Daniel P. Topp	TOPP-P7.1-US	8842

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/651,583	TOPP, DANIEL P.	
	Examiner	Art Unit	
	David J. Parsley	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 10-14-05 and this action is final.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32-34, 26-40, 42-44, 49 and 51-52 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,716,676 to Imagawa.

Referring to claims 32 and 49, Imagawa discloses an apparatus for eradicating pests comprising, a chamber – at A, having a first end, a second end, a left wall a right wall, a ceiling, sub-ceiling and a floor – see for example figure 2 and 6-7, the ceiling and sub-ceiling forming a plenum, the ceiling and floor being connected to the ends and walls to define an interior volume of the chamber – see for example figures 2-7, a door – proximate - a – see figure 1 and column 3 lines 9-19, positioned at the first end of the chamber, a means for heating air – at 12-14, in the interior volume of the chamber – see for example figure 7, the heating means capable of heating

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the air in the chamber to at least a temperature lethal to pests – see for example column 3 lines 57-68 and column 4 lines 1-8 and column 5 lines 10-30, a plenum – at the interior of A', that communicates with the heating means – see for example figure 7, and the air in the interior volume of the chamber – see for example figure 7, for delivering heated air to the interior volume of the chamber, the plenum being formed either internal or external to the chamber in the interior of the chamber – at 12,13,22, and the ceiling communicating with the interior of the chamber – see for example figures 1-7, a means for circulating/returning air – at 10a-10d, 11a-11d and/or 22, having an inlet and an outlet, the outlet of the circulating air means connected to the inlet of the heater – see the ducting in figures 1-2, and the inlet of the circulating air means connected to the ceiling plenum – see figures 2-7, the plenum cooperating with the air circulating means for evenly distributing the air within the interior volume of the chamber – see for example figure 7 and column 5 lines 10-30, the ceiling plenum communicating with the interior of the chamber to define a continuous volume for allowing air to be moved by the circulating means through the heater into the interior of the chamber, the through the ceiling plenum and back to the circulating means, the circulating means, heating means and ceiling plenum communicating with each other in order to evenly heat/treat any products placed within the interior to a temperature lethal to pests for a time of sufficient length to be lethal to pests – see for example figures 1-7 and columns 2-5.

Referring to claim 33, Imagawa discloses the means for returning air comprises a second plenum – see proximate B or B' in figures 6-7, the plenum and the second plenum cooperating with each other and with the fan – at 22, to more completely circulate the air within the interior of the chamber – see for example figures 6-7.

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Referring to claim 34, Imagawa discloses the heater comprises an indirect fired heating unit – see for example column 3 lines 1-42.

Referring to claim 36, Imagawa discloses the means for circulating the air comprises a fan assembly – at 22 utilizing a fan and electric fan motor – see for example column 3 lines 20-42.

Referring to claim 37, Imagawa discloses the fan assembly – at 22 is a duct axial fan – see for example figure 2.

Referring to claim 38, Imagawa discloses the floor is reinforced to support the weight of any machinery required to load objects into or unload objects from the chamber – see for example figure 2, which shows the floor being of a significant thickness to support heavy weights.

Referring to claim 39, Imagawa discloses the heater – at 12, has an inlet for allowing the second plenum to communicate with the heater thereby directing air into the heater and an output for allowing the plenum to communicate with the heater thereby directing heated air, into the interior volume of the chamber to heat the interior volume of the chamber to heat the interior volume – see for example figures 1-7 at items 2-15.

Referring to claim 40, Imagawa discloses the heater output and input are connected to the plenum and to the second plenum respectively via ducting – see for example figures 1-7.

Referring to claim 42, Imagawa discloses a sub-ceiling – proximate 27 in figure 5 and see figures 6-7, wherein the sub-ceiling and the existing ceiling forms the plenum either internal to or external to the chamber – see for example figures 5-7.

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Referring to claim 43, Imagawa discloses the means for heating – at 12,13 comprises an inlet for allowing air to be heated for make-up air as required to pressurize the interior of the chamber – see for example at item 12 in figures 1-2.

Referring to claim 44, Imagawa discloses an apparatus for eradicating pests comprising, a chamber – at A or B or A' or B', defining an interior volume – see figures 1 and 7, the chamber having a means for lifting by external machinery – proximate 10a or 25 or at the bottom of 24', the chamber having first and second ends – see for example figures 1-2 and 7, a door or doors – proximate – a – see figure 1 and column 3 lines 9-19, positioned at the first end of the chamber, a means for evenly heating – at 12,13, the heating means being capable of raising the temperature of the interior of the chamber to a temperature lethal to pests – see for example column 3 lines 1-68 and column 5 lines 10-30, the means for heating including at least one plenum – at the interior of A, B and/or C or – at A' and/or B', that communicates with the means for heating – see for example figures 1-2 and 7, for assisting in distributing air more evenly throughout the interior volume of the chamber – see for example figures 1-2 and 7, the plenum and the heater – at 12, are located either exterior to or remotely from the chamber – at A or B or B' or the chamber at the interior of A' – see for example figures 1-2 and 7 and columns 3 and 5.

Referring to claim 51, Imagawa discloses a control means – see for example columns 2-5.

Referring to claim 52, Imagawa discloses a primary floor – at 16,17, spaced apart from and above the floor of the chamber – see figures 1-7, the primary floor comprising a plurality of sections having perforations – see for example figures 3-7, the perforations being sized, shaped and spaced in order to communicate with the means for circulating, the heating means and the

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ceiling plenum to further improve and distribute heat evenly within the interior of the chamber – see for example figures 3-7 and columns 2-5.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imagawa as applied to claims 32 and 49 above, and further in view of U.S. Patent No. 6,141,901 to Johnson et al.

Referring to claims 35 and 50, Imagawa does not disclose the heater comprises a direct-fired heating unit. Johnson et al. does disclose the heater comprises a direct-fired heating unit – see for example column 1 lines 55-56. Therefore it would have been obvious to one of ordinary skill in the art to take the pest eradicating apparatus of Imagawa and add the direct-fired heating unit of Johnson et al., so as to quickly heat the device to the desired temperature.

Claims 41 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imagawa as applied to claims 32 and 44 above, and further in view of U.S. Patent No. 5,965,185 to Bianco or U.S. Patent No. 6,227,002 to Bianco et al.

Referring to claims 41 and 46-47 Imagawa does not disclose the chamber is a modified trailer having towing means and a tractor wheel attached to the underside of the chamber for

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facilitating the movement and transportation of the chamber. Bianco and Bianco et al. do disclose the chamber is a modified trailer having towing means and a tractor wheel attached to the underside of the chamber for facilitating the movement and transportation of the chamber – see for example figure 2 of Bianco and figure 1 of Bianco et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Imagawa and add the chamber being a trailer of Bianco or Bianco et al., so as to allow for the device to be movable to different locations as desired by the user. Further making a device portable does not render the claimed invention patentable over the prior art as seen in, *In re Lindberg*, 194 F.2d 732, 93 USPQ 23 (CCPA 1952).

Referring to claim 45, Imagawa does not disclose the chamber is a refurbished reefer box. Bianco and Bianco et al. do disclose the chamber is a box – see proximate 24 of Bianco and proximate – 190 of Bianco et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Imagawa and add the chamber being a box of Bianco or Bianco et al., so as to allow of the chamber to be easily moved for storage or transportation.

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Imagawa as applied to claim 44 above, and further in view of U.S. Patent No. 3,814,315 to Dmysh. Imagawa does not disclose the chamber is a modified trailer to which the heating device is attached. Dmysh does disclose the chamber is a trailer to which the heating device is attached – see for example at items 16-18. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Imagawa and add the trailer with attached heater of Dmysh, so as to allow for the heater to be movable to different locations.

Response to Arguments

4. Regarding claims 32, 44 and 49, applicant argues that the Imagawa reference US 4716676 does not disclose a heater which heats air to eradicate pests. As seen in figures 1-2 and 7 and in column 3 lines 1-8 and lines 67-68, column 4 lines 1-8 and column 5 lines 1-30, a heater – at 12-14 is disclosed which is a steam heating device/boiler used to increase the air temperature in the chambers – at A or A' to a level which is capable of killing insects. A boiler is capable of heating air and thus being equated to the term heater and even though applicant does not claim the heater is a boiler the claim language does not prohibit a boiler from being used as a heater. Further, applicant argues that the Imagawa reference does not disclose a plenum. This argument is the same as presented in applicant's previous response dated 2-14-05, therefore see the response to this argument in paragraphs 4-5 in the office action dated 4-14-05. The heating of the chamber – at A or A' in the Imagawa reference is not done in a vacuum. Therefore, air exists in the chamber and is heated when the steam is introduced into the chamber via the heating means – at 12-14 as seen in figures 1-2 and 7. Further, it is noted that applicant claims the use of steam as a source of heat/heating means in the originally filed claim 23 of this application which is now canceled and in claim 23 of the parent application 10/145,184, now patent U.S. 6,612,067. Further, applicant states that the declaration filed under 37 CFR 1.132 dated 2-14-05 was not considered by the examiner. The declaration was considered by the examiner but the declaration was not considered persuasive for the reasons set forth in paragraph 4 of the office action dated 4-14-05.

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Regarding claim 33, the Imagawa reference discloses a second plenum – see proximate B or B' in figures 6-7, where the second plenum can be at the interior of the inner chamber housing the containers – at B or B'.

Regarding claim 34, the Imagawa reference discloses a heating system comprising a steam generator – at 12, a heater – at 13 and a cooler – at 14. The heater at 13 is deemed to be an indirect fired heater.

Regarding claim 36, the Imagawa reference discloses the air in the chamber is recirculated as seen via the arrows in figures 1-3 and 6-7.

Regarding claim 37, the Imagawa reference discloses fans – at 10a-10c as seen in figure 2.

Regarding claim 38, the Imagawa reference discloses a statically fixed floor – at the bottom of the chambers – at A and A' as seen in figures 1-3 and 6-7, which are capable of supporting the weight of the components of the device and therefore must be capable of supporting the weight of a forklift.

Regarding claims 35 and 50, applicant argues that the combination of the Imagawa reference and the Johnson et al. reference US 6141901 is improper. However, both the Imagawa and Johnson et al. references disclose devices which both use heat to eliminate insects. Therefore, since both references disclose inventions which operate in a similar manner to achieve the same result it is deemed that it would have been obvious to one of ordinary skill in the art to replace the heating device of one reference with the other given the motivation to combine the references stated above in paragraph 3 of this office action.

Regarding claims 41 and 45-47, applicant argues that there is no motivation to combine the Imagawa reference with the Bianco reference US 5965185 or the Bianco et al. reference US 6227002. However, it is deemed that the combination of the Imagawa reference with the Bianco reference or of the Imagawa reference with the Bianco et al. reference is proper given the motivation to combine the references given in paragraph 3 of this office action.

Regarding claim 48, applicant argues that it is improper to combine the Imagawa reference with the Dmysh reference US 3814315. However, both the Imagawa reference and the Dmysh reference disclose devices used to heat the interiors of structures. Therefore, since both references disclose inventions which operate in a similar manner to achieve the same result it is deemed that it would have been obvious to one of ordinary skill in the art to replace the heating device of one reference with the other given the motivation to combine the references stated above in paragraph 3 of this office action.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period


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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David Parsley
Patent Examiner
Art Unit 3643


PETER M. POON
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3/2/06